

## Comments to the UN SG's report by Stiftung Digitale Chancen, Germany and Deutsches Kinderhilfswerk e.V., Germany

The amendment of the German Youth Protection Act in May 2021<sup>1</sup> is a milestone in the implementation of the UN-CRC in Germany. The rights of children to protection, provision and participation in the digital environment are strengthened with the new legislation, thus Germany is one of the first countries in the world to implement the requirements of the General Comment on the Rights of Children in the Digital Environment in an exemplary manner.

Art. 10a of the Act establishes the new protective objective of personal integrity of children and youths as well as the promotion of orientation. By these two new objectives the Youth Protection Act pursues a holistic approach: parents and educational staff are provided with uniform age labels and descriptors of risk potential as tools to select media applications and services that are age-appropriate. Through precautionary measures and orientation, children and young people are enabled to develop media literacy and to deal with media both independently and confidently.

With the new regulation, the participation of children and young people, and thus one of the basic principles of the UN Convention on the Rights of the Child, is anchored in the German legislative text. Article 12 of the UNCRC, paragraph 1 states *"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."* The amended Youth Protection Act makes the participation of children and young people in an advisory board established at the Federal Agency for the Protection of Minors in the Media mandatory and thereby also foresees for children to participate in the regular evaluation of the effectiveness of the law. The inclusion of children and young people in the shaping of contemporary youth media protection is only logical, considering that they are often the early adopters of new digital applications, devices and services, and may be exposed to significant risks in some cases. These are now explicitly named in the German law as follows: "Risks from communication and contact functions, purchase functions, gambling-like mechanisms, mechanisms to promote excessive media use behaviour, the disclosure of personal and usage data to third parties without consent, as well as age-inappropriate purchase incentives, in particular through advertising references to other media." The law obliges platform providers to take precautionary measures to counter such risks. These include child-friendly terms and conditions, safe default settings for the use of services that limit the risks of use depending on age, for example, by ensuring that user profiles cannot be found by search engines, and easy-to-find information on provider-independent advice, help and reporting mechanisms. Support in this regard can be provided by organisations of voluntary self-regulation which, together with the service providers, should develop guidelines for the implementation of such precautionary measures and also include the views of children and young people.

As civil society organisations advocating for children's rights realisation in both their onsite everyday life as well as in the digital environment we are pleading for the high quality standards of child protection mentioned above, which should also be set beyond the German national jurisdiction. Regulation on European level like the DSA<sup>2</sup> does require only very large online platforms with more than 45 million users in the EU to implement precautionary measures for the protection of young users, although referring to Art. 3 UN-CRC and the best interest of the child as a primary consideration.

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<sup>1</sup> <https://dip.bundestag.de/vorgang/.../268540/> <https://www.gesetze-im-internet.de/juschg/index.html>

<sup>2</sup> [https://ec.europa.eu/info/digital-services-act-ensuring-safe-and-accountable-online-environment\\_en](https://ec.europa.eu/info/digital-services-act-ensuring-safe-and-accountable-online-environment_en)

The Resolution adopted by the General Assembly on 16 December 2021 in their 76. session recognizes the importance of international, regional and bilateral multi-stakeholder partnerships and initiatives to advance the effective protection and promotion of the rights of the child and the elimination of all violence against children. The resolution also expresses deep concerns on children's exacerbated exposure to the risk of all forms of violence, including in the digital context, inter alia sexual harassment, peer-to-peer sexual harassment and cyberbullying, child sexual exploitation and abuse, child grooming, trafficking in persons, hate speech, stigmatization, racism, xenophobia and discrimination and calls upon States parties to increase their efforts for the full implementation of the Convention on the Rights of the Child. Art. 19 of the Resolution strongly condemns all forms of violence, harassment and abuse against children in all settings, including physical, psychological and sexual violence, (...) paedophilia, child prostitution, child pornography and other child sexual abuse material, child sex tourism, gang and armed violence, sexual exploitation of children online and offline, bullying, including cyberbullying, (...) and urges States to strengthen efforts to prevent and protect children from all such violence through a comprehensive, gender-responsive and age-appropriate approach and to develop an inclusive multifaceted and systematic framework, which is integrated into national planning processes, to respond effectively to violence against children and to provide for safe and child-sensitive counselling, complaint and reporting mechanisms and safeguards for the rights of affected children; Art. 20 calls upon Member States to ensure that child protection, including social protection and mental health services, is recognized as essential (...); eventually Art. 26 encourages States to make efforts towards putting children's needs at the centre of digital policy.

With the draft CSA regulation<sup>3</sup> currently debated in the parliamentary process European policy has put the needs and the best interest of children in the centre. The huge numbers of children worldwide that are affected by sexual violence, being groomed into abuse and exploitation, their images being shared millions of times prompt us to strongly plead for the UN GA to refer to the importance of the kind of international and multi-stakeholder co-operation the draft CSA regulation provides for and make a stance for cross-national efforts to make the best interest of the child a primary consideration and protect children in the digital world.

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<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A209%3AFIN&qid=1652451192472>